

TENTATIVE RULINGS for CIVIL LAW and MOTION

May 2, 2008

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. If no hearing is requested, the prevailing party must submit an order to the Court in accordance with Rule 3.1312 of the California Rules of Court. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Three: (530) 406-6817

TENTATIVE RULING

Case: Mathews v. Mathews

Case No. CV CV 05-1303

Hearing: May 2, 2008 Department Three 1:30 p.m.

The court previously granted Jacqueline Mathews' unopposed petition to confirm that a power of attorney is in effect. (Prob. Code, § 4402.)

The unopposed petition to confirm authority to act as successor trustee of the Mathews Family Revocable Trust dated February 24, 1994, filed by Jacqueline Mathews a/k/a Jacqueline Marples La Mar is **GRANTED**. (Prob. Code, §§ 811, 812, and 15642.)

Gene Mathews, Mathews Development and Construction, Inc., Gene Mathews Real Estate, Inc., Jacqueline Mathews, Richard H. Gray, Richard E. Rader, Larry L. Rader, Paul Goulart, and Rader, Rader, Goulart & Gray, and Kenneth Fagan's motions for good faith settlement determination pursuant to Code of Civil Procedure section 877.6 and Plaintiff Scott Mathews' motion for court approval of the settlement of derivative actions on behalf of the limited partnership are **GRANTED**. The settlement is within the reasonable range of the settling defendants' proportionate liability for the claims stated in Scott Mathews' amended complaint. (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488.)

The merits of Scott Mathews' malpractice and other claims against John Mounier are not before the Court. Accordingly, the appeal of this Court's June 1, 2007, order in relation to John Mounier's anti-SLAPP motion does not preclude the Court from deciding Scott Mathews' demurrer.

Scott Mathews' demurrer to the indemnity cause of action in John Mounier's first amended cross-complaint is **SUSTAINED WITHOUT LEAVE TO AMEND**. (*Munoz v. Davis* (1983) 141 Cal.App.3d 420.) John Mounier is not entitled to equitable indemnity from Scott Mathews because John Mounier and Scott Mathews are not jointly and severally liable to the Investment Group for John Mounier's professional malpractice.

Scott Mathews' demurrer to the declaratory relief cause of action in John Mounier's first amended cross-complaint is **SUSTAINED WITH LEAVE TO AMEND**. The facts alleged do not show that John Mounier has standing to bring the declaratory relief action alleged. (Code Civ. Proc., §§ 367 and 1060; *Sherwyn v. Dept. of Social Services* (1985) 173 Cal.App.3d 52.) The amended cross-complaint is not a class or representative action. There is no allegation that John Mounier was/is a party to the partnership agreement, a party beneficially interested therein, or an assignee of someone who was/is a party to the partnership agreement or someone beneficially interested therein. The declaratory relief action does not seek to determine John Mounier's rights and duties in relation to Scott Mathews or vice versa. Further, John Mounier does not allege that he is seeking redress for any injury that he has personally suffered or will personally suffer. John Mounier fails to cite any authority in support of his standing to bring the declaratory relief action alleged.

All other grounds for demurrer are **OVERRULED**.

John Mounier shall file his amended cross-complaint by May 12, 2008.